



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 16, 1998

Ms. Laura S. Fowler
Henslee, Fowler & Hepworth, PLLC
800 Frost Plaza
816 Congress Avenue
Austin, Texas 78701-2443

OR98-0170

Dear Ms. Fowler:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111973.

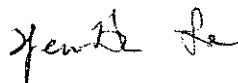
The Birdville Independent School District (the "district") received a request for eight categories of information relating to the district's request for proposals to build a third high school. You contend that information responsive to seven categories is excepted from required public disclosure by sections 552.101, 552.103, 552.104, and 552.110 of the Government Code. You have not raised any exceptions against public disclosure as to the request for the district's estimated budget for the building project. Therefore, we assume that you have furnished the requested budget to the requestor; if you have not, you must do so. We have considered your arguments and reviewed the information submitted.

Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of this exception is to protect the purchasing interests of a governmental body, usually in competitive bidding situations prior to the awarding of a contract. Open Records Decision No. 593 (1991) at 2. Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision 541 (1990) at 4. Section 552.104 is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. *See, e.g.*, Open Records Decision No. 463 (1987).

You state that the "District has not yet finalized a contract with any of the proposers," and that contractual negotiations are still ongoing. Therefore, we conclude that the district may withhold the information which you have asserted is excepted from disclosure under section 552.104. Open Records Decision No. 170 (1977) at 2. Once the competitive bidding process is completed and a contract has been awarded, you may not continue to withhold this information under section 552.104. Open Records Decision No. 541 (1990) at 5.

As we have resolved the matter under section 552.104, we need not address your other claimed exceptions. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref.: ID# 111973

Enclosures: Submitted documents

cc: Mr. Jeffrey A. Ford
Ford, Yungblut, White and Salazar
1100 Highland Park Place
4514 Cole Avenue
Dallas, Texas 75205
(w/o enclosures)

Mr. Joseph M. Walker
President
Walker Building Corporation
P.O. Box 820217
Fort Worth, Texas 76182-0217
(w/o enclosures)

Mr. David J. Andrews
Vice President
BFW Construction Company, Inc.
P.O. Box 628
Temple, Texas 76503
(w/o enclosures)

Mr. Colin A. Graidage
President
Charter Building Company
1501 LBJ Freeway, Suite 700
Dallas, Texas 75234-6084
(w/o enclosures)

Mr. William R. Sharp
Vice President Estimating
Douglas E. Barnhart, Inc.
P.O. Box 802213
Dallas, Texas 75380-2213
(w/o enclosures)